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COMMISSIONER

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November 12, 2008

Chris Spruce, Chair
Legislative Subcommittee
Right to Know Advisory Committee

Re: Release of reasons for decision to deny, revoke, suspend or reinstate
certification, authorization or approval

Dear Mr. Spruce:

Thank you for your letter of October 15, 2008, enclosing the proposed changes to clarify 20-A § 13004 (2-A) and requesting my comments on releasing the reasons for taking disciplinary action.

The proposed draft in my opinion accurately reflects existing law as interpreted by the Department. It might be noted in the Statement of Intention that the Department's duty is to provide only the employment information shown in its records, not the more accurate information obtainable from the local school.

As to any change the legislature might wish to make to require that the reasons for a discipline action should also be disclosed pursuant to § 13004 (2-A), care must be exercised to avoid placing in jeopardy the Department's ability to receive national (FBI) criminal history record information (CHRI).¹ Here are my concerns;

- If all decisions for discipline are reported except those based on national CHRI, isn't the lack of a reason in a decision sufficient evidence that the reason is national CHRI?
- Will the FBI treat state SBI information as national information to the extent it appears on the national record system? If so, would that include a Maine conviction used as a reason for discipline which was reported nationally subsequent to the decision?

¹ The Office of Policy and Legal Analysis, "A study of laws in other states that permit the dissemination of confidential information pertaining to teacher certification" p. 19-20 (Draft Staff Report, October 2008) ("...[T]he exchange of this information is subject to cancellation if unauthorized dissemination is made." (Cite omitted.)

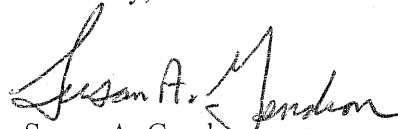


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Reporting the *conduct* may be a solution to avoid losing our access to national CHRI. Besides, a conviction is not the real reason for discipline anyway. A conviction just simplifies the proof of what happened. The evidence may be persuasive by a preponderance of the evidence, or even by clear and convincing evidence, and yet be insufficient to meet the higher standard of beyond a reasonable doubt.

We are still having a discussion with jurisdictions that have open access laws. Some states limit disclosure if the information is deemed confidential under federal law. Where a conviction is reported by the FBI, some states rely on a certified copy of the conviction from the court as a basis for the action. The latter solution seems workable though we have not finished thinking it through. Maine law allows us to rely on the convictions reported on the rap sheets without resorting to certified copies of convictions. 20-A § 6103 (1).

Sincerely,

A handwritten signature in dark ink, appearing to read "Susan A. Gendron", written over a horizontal line.

Susan A. Gendron
Commissioner of Education

SAG / ajk

Copies: Right To Know Committee

Hon. Peter B. Bowman, Senate Chair, Joint Standing Committee on Education
Hon. Jacqueline R. Norton, House Chair, Joint Standing Committee on Education
Steve Crouse, Director, Government Relations, Maine Education Association
Shawn Keenan, Legal Counsel Maine Education Association
Greg Scott, Legislative Liaison
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